

## **REMARKS/ARGUMENTS**

The Office Action of March 19, 2008 required an election between Group I (Claims 13-15, 17, 18), Group II (Claims 25 and 26) and Group III (claims 69 and 70) because the inventions are alleged to be independent and distinct. Applicants respectfully elect Group I with traverse. Applicants have hereby added new claims 71 through 74 which depend directly or indirectly on claim 13, and, therefore, the newly added claims 71-74 should be included in Group I.

**Election:** Applicants elect Group I (Claims 13- 15, 17, 18 and 71-74) with traverse.

**Traverse:** Applicants contend that no basis has been shown that the species of Group I, Group II and III are distinct. Applicants therefore request reconsideration of the election/restriction requirement.

MPEP 803 provides (in part)

There are two criteria for a proper requirement for restriction between patentably distinct inventions:

- (A) The inventions must be independent (see MPEP § 802.01, § 806.06<, § 808.01) or distinct as claimed (see MPEP § 806.05 - § 806.05(j)); and
- (B) There would be a serious burden on the examiner if restriction is not required (see MPEP § 803.02, § 808, and § 808.02).

It is respectfully submitted that no such showing has been made.

37 CFR 1.146 (Election of species) provides:

In the ***first action*** on an application containing a generic claim to a generic invention (genus) and claims to more than one patentably distinct species embraced thereby, the examiner may require the applicant in the reply to that action to elect a species of his or her invention to which his or her claim will be restricted if no claim to the genus is found to be allowable. However, if such application contains claims directed to more than a reasonable number of species, the examiner may require restriction of the claims to not more than a reasonable number of species before taking further action in the application. [***Emphasis added***]

It is noted that this is neither the first Office Action nor the first restriction requirement.  
The Office Action dated February 28, 2006 required a restriction between:

1. Claims 1-34 and 56-68 drawn to a product classified in class 257, subclass 442 and the method and
2. Claim 35 – 55 drawn to a process of growing a film, classified in class 438, subclass 478.

Accordingly, inasmuch as the requirements of 37 CFR 1.146 have not been satisfied, reconsideration and withdrawal of the restriction requirement is requested.

Applicant respectfully requests that a timely Notice of Allowance be issued in this case. The Director is hereby authorized to charge any additional fees or underpayments under 37 C.F.R. § 1.16 & 1.17; and credit any overpayments to Deposit Account No. **19-2201** held in the name of U.S. Army Materiel Command.

Respectfully submitted,

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